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No. 80-737.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1980.

CITIZENS AGAINST RENT CONTROL/COALITION FOR FAIR HOUSING, AN UNINCORPORATED ASSOCIATION; MASON-MCDUFFIE, A CALIFORNIA CORPORATION; BERKELEY BOARD OF REALTORS, A CALIFORNIA NONPROFIT ASSOCIATION; BETTY GERITZ, MURIEL ROSENKRANZ AND EVA FLOYSTRUP,
APPELLANTS,

v.

CITY OF BERKELEY, CALIFORNIA, A MUNICIPAL CORPORATION; THE BERKELEY CITY COUNCIL; THE BERKELEY FAIR CAMPAIGN PRACTICES COMMISSION; PATRICIA DEVITO, BETTY BENNETT, MERLIN EDWARDS, HOHN CHASEN, THOMAS DONOVAN, FAITH OTIS, SANDY MILLER, DAVID B. ROSENTHAL, AS MEMBERS OF THE BERKELEY FAIR CAMPAIGN PRACTICES COMMISSION,
APPELLEES.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA.

Brief of Amicus Curiae New England Legal Foundation in Support of Appellants.

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Table of Contents.

Introductory Statement 2

Summary of Argument 4

Argument 4

I. The Berkeley Ordinance Violates First Amendment Freedoms 4

II. There Is No Compelling Governmental Interest to Justify the Restriction Contained in the Berkeley Ordinance 9

III. The Berkeley Ordinance Is Not Closely Drawn to Avoid Unnecessary Abridgment of First Amendment Freedoms 16

Conclusion 18

Table of Authorities Cited.

CASES.

Bates v. Little Rock, 361 U.S. 516 (1960) 9

Buckley v. Valeo, 424 U.S. 1 (1976) 5, 6, 9, 10, 12, 18

C & C Plywood Corporation v. Hanson, 583 F. 2d 421 (9th Cir. 1978) 8

Carey v. Brown, 447 U.S. 455 (1980) 2

Citizens Against Rent Control v. City of Berkeley, 27 Cal. 3d 819 (1980) 10, 14, 17

Consolidated Edison Company of New York, Inc. v. Public Service Commission of the State of New York, 447 U.S. 530 (1980) 2

CSC v. Letter Carriers, 413 U.S. 548 (1973) 11

Elrod v. Burns, 427 U.S. 347 (1976) 9

First National Bank of Boston v. Bellotti, 435 U.S. 765 (1978) 2, 3, 6, 7, 9, 10, 11, 12, 16, 17

Garrison v. Louisiana, 379 U.S. 64 (1964) 6

Hardie v. Eu, 18 Cal. 3d 371 (1976) 10

Let's Help Florida v. McCrary, 621 F. 2d 195 (5th Cir. 1980) 7, 8

Let's Help Florida v. Smathers, 453 F. Supp. 1003 (N.D. Fla. 1978) 7n.

Linmark Associates, Inc. v. Willingboro, 431 U.S. 85 (1977) 18

NAACP v. Alabama, 357 U.S. 449 (1958) 9

NAACP v. Button, 371 U.S. 415 (1963) 9

Pacific Gas and Electric Company v. City of Berkeley, 60 Cal. App. 3d 123 (1976) 5

Pickering v. Board of Education, 391 U.S. 563 (1968) 6

Roth v. United States, 354 U.S. 476 (1957) 6

Schwartz v. Romnes, 495 F. 2d 844 (2d Cir. 1974) 8, 10n.

Thomas v. Collins, 323 U.S. 516 (1945) 16

United States v. Automobile Workers, 352 U.S. 567 (1957) 16

United States v. Harriss, 347 U.S. 612 (1954) 18

Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748 (1976) 18

CONSTITUTIONAL PROVISIONS AND STATUTES.

United States Constitution, First Amendment 3, 4, 5, 6, 8, 9, 10, 12, 16, 17, 18

Mass. Gen. Laws, c. 55, § 7 2-3

Mass. Gen. Laws, c. 55, § 8 3n., 6, 7

ORDINANCES.

Berkeley, California, Ordinance No. 4700-N.S. § 112 18
§ 206 5n., 17
§ 217 5n.
§ 219 5n.
§ 400, et seq. 18
§ 602 4, 5, 17
§ 605 4, 5

MISCELLANEOUS.

American Enterprise Institute, Referendums (1978) 13n.

American Enterprise Institute, The Referendum Device (1981) 15n.

J. Shockley, The Initiative Process in Colorado Politics: An Assessment (Bureau of Government Research and Services; University of Colorado, Boulder 1980) 15n.

S. Lydenberg, Bankrolling Ballots (Council on Economic Priorities; New York, N.Y. 1979) 14n.

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Brief of Amicus Curiae New England Legal Foundation in Support of Appellants.

Introductory Statement.

New England Legal Foundation (NELF) is a non-profit, tax exempt corporation organized under the laws of the Commonwealth of Massachusetts for the purpose of engaging in litigation on public interest matters. Policy for NELF is set by a Board of Directors composed of New England citizens, the majority of whom are attorneys. The Board evaluates the merits of any contemplated legal action and authorizes such legal action only where the Foundation's position has broad support within the general community.

The Foundation files this brief in support of the Appellants. Consent has been obtained from the Appellants and the Appellees. Copies of Appellants' and Appellees' letters of consent are on file with the Clerk of this Court. The Foundation adopts Appellants' Statements of Facts, Parties and Issues.

The Foundation has a long-standing interest in First Amendment cases. In 1978, NELF on behalf of the New England Council, Inc. filed an *amicus* brief in *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978). The Court referred to this brief in footnote 22, *id.* at 785. In the 1979 term, the Foundation filed *amicus* briefs in *Consolidated Edison Company of New York, Inc. v. Public Service Commission of the State of New York*, 447 U.S. 530 (1980) and *Carey v. Brown*, 447 U.S. 455 (1980).

The Foundation's interest is more than academic or historical. The statutes of the Commonwealth of Massachusetts contain a restriction on individual contributions to a referendum campaign, similar to the limitation in the Berkeley Ordinance presently before the Court.[1] Under Massachusetts

[1] The word "referendum" for the purpose of this brief means any proposal submitted to the voters of any jurisdiction for their approbation, unless a clear contrary intent is evident. "Referendum" includes an "initiative," "ballot question" or "advisory opinion," as well as "referendum."

General Laws chapter 55, section 7 an individual may not contribute more than $1,000 to a political committee which is unaffiliated with a political candidate or party. Mass. Gen. Laws, c. 55, § 7. Organizations created to support or oppose referenda are included in this category of "political committees." Since *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978), Massachusetts law does not prohibit or limit contributions or expenditures by corporations to influence the outcome of referenda. There have been attempts, however, in the Massachusetts Legislature to limit corporate contributions.[2]

The Foundation believes that limits on individual contributions to referenda campaigns are unconstitutional. Statutes or ordinances which limit political speech and chill public debate seriously threaten core First Amendment freedoms.

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[2] There were six proposals submitted to the Massachusetts Legislature in 1981 that dealt with amendments to the Massachusetts statutes regulating campaign contributions. Mass. Gen. Laws c. 55, § 7 and § 8. These were:

H493—a proposal to limit corporate contributions to a political committee for a referendum campaign to $1,000 per election;

H1255—a proposal to keep the $1,000 limit for individual contributions; restrict the number of referendum committees to one on each side of a question; and re-enact the prohibition of corporate contributions and expenditures;

H1257—a proposal that prohibits all expenditures for referenda except those authorized by statute (these funds are to be spent by the constitutional officers of the state);

H6274—a proposal to limit corporate contributions in a referendum to $1,000;

S386—a proposal to limit transfers between political committees to $500 and to limit individual contributions to referenda to $500; and

S405—a proposal to limit individual contributions to referendum committees to $100.

Such statutes by limiting contributions reduce the amount of information to the voters on important public issues. There is no sufficiently compelling governmental interest which justifies restricting speech when citizens act in their sovereign capacity. The First Amendment is designed to insure wide-open, robust debate on public issues. Such debate is essential for intelligent self-government. The Berkeley Ordinance violates the Free Speech Clause of the First Amendment. It should be declared unconstitutional.

Summary of Argument.

Section 602 of the Berkeley Ordinance violates the Free Speech Clause of the First Amendment. It not only limits freedom of speech, it also threatens free and open debate on public issues and, in a highly paternalistic fashion, impairs the rights of the public to hear. The Ordinance cannot survive the strict scrutiny required in constitutional matters. There is no compelling or subordinating governmental interest to justify the limits imposed on free speech by the Ordinance. Moreover, the Ordinance is not the least restrictive scheme necessary to achieve the governmental interests offered as justification for this intrusion into the lives and political discussion of Berkeley citizens.

Argument.

I. The Berkeley Ordinance Violates First Amendment Freedoms.

The Berkeley Election Reform Act of 1974, effective June 4, 1974, governs candidate and referendum elections in the City of Berkeley, California. This Ordinance has been the subject of litigation prior to this case. Section 605 of the

Berkeley Ordinance was enjoined by a trial court in 1974.[3] Section 605 prohibited business entities from making contributions to referendum committees. The California Appeal Court upheld the injunction issued by the trial court because section 605 deprived corporations of "freedom of speech, due process and equal protection" of the laws. *Pacific Gas and Electric Company v. City of Berkeley*, 60 Cal. App. 3d 123, 126 (1976).

Section 602 of the Berkeley Ordinance, here in issue, provides:

> Sec. 602. No person shall make, and no campaign treasurer shall solicit or accept, any contribution which will cause the total amount contributed by such person with respect to a single election in support of or in opposition to a measure to exceed two hundred and fifty dollars ($250).[4]

While the Berkeley Ordinance limits *contributions*, it contains no restriction on the amount, or type, of *expenditures* a person may make to influence the election of a candidate or a referendum. A restriction on contributions in the election process has been held to violate the Free Speech Clause of the First Amendment. *Buckley v. Valeo*, 424 U.S. 1 (1976). Con-

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[3] Section 605 of the Berkeley Ordinance states:

> Section 605. No proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, or labor union shall make a contribution to any candidate or committee, directly or indirectly, and no campaign treasurer shall solicit or accept any such contribution.

[4] Other sections of the Ordinance define words in § 602. "Measure" means any initiative, referendum or recall procedure. § 217. "Person" is any individual, business entity, association, committee or other group of persons acting in concert. § 219. "Contribution" means a gift, loan, advance, deposit, etc. made directly or indirectly in aid of, or in opposition to, the qualification for the ballot or voter approval of one or more measures. § 206.

tributions serve First Amendment freedoms by providing the wherewithal for referenda advocacy.

The First Amendment protects political expression in order to "assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people." *Roth v. United States*, 354 U.S. 476, 484 (1957). As this Court recently noted, "[d]iscussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution." *Buckley v. Valeo*, 424 U.S. 1, 14 (1976). Political speech therefore includes not only discussion of candidates and their qualifications; it also includes speech concerning referenda. *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 776 (1978).

The public's right to hear has also been recognized as an essential element of the First Amendment where political speech is involved. Nowhere is this right more essential than when public policy decisions are made by the voters through referenda. This Court has recognized that "[t]he public interest in having free and unhindered debate on matters of public importance" is "the core value of the Free Speech Clause of the First Amendment." *Pickering v. Board of Education*, 391 U.S. 563, 573 (1968). Similarly, in *Garrison v. Louisiana*, 379 U.S. 64 (1964) the Court stated:

> [S]peech concerning public affairs is more than self-expression; it is the essence of self-government. The First and Fourteenth Amendments embody our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open. . . ." *Id.* at 74-75.

In *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978), this Court faced squarely a prohibition of contributions and expenditures in the referendum process. Chapter 55, section 8 of the Massachusetts General Laws prohibited

corporations from contributing or expending money to influence referenda unless the referenda "materially affected" the corporation. Mass. Gen. Laws, c. 55, § 8. The Court held the statute unconstitutional and said that the activities restricted by the statute are "the type of speech indispensable to decisionmaking in a democracy. . . ." *First National Bank of Boston v. Bellotti,* 435 U.S. at 777. The Court rejected limitations on both contributions and expenditures, because for referenda both types of spending serve to inform and educate the electorate.

Recently, in *Let's Help Florida v. McCrary,* 621 F. 2d 195 (5th Cir. 1980), the Fifth Circuit, faced with a constitutional challenge to a Florida statute strikingly similar to the Berkeley Ordinance, stated:

> . . . when people vote on a referendum proposal, they directly decide the pertinent political issue for themselves. Large contributions for publicity by one group or another do not influence the political decisionmakers—in this case, the voters themselves—except in a manner protected by the First Amendment. *Id.* at 200.[5]

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[5] The Federal District Court for the Northern District of Florida discussed in a footnote the differences between a contribution to a candidate and a contribution to a referendum campaign committee. The Court said:

> Under the circumstances of this case the distinction of whether the speech is that of plaintiff or that of a contributor may lose its significance. Let's Help Florida is organized for the purpose of supporting a single issue. Unlike a candidate for office with many issues to discuss, plaintiff can concentrate its efforts on one theme and in this regard a contribution may be more directly transformed into speech. *The committee could therefore be viewed as a conduit for the speech of the contributor directed to a single goal. Let's Help Florida v. Smathers,* 453 F. Supp. 1003, 1011, n.7 (N.D. Fla. 1978). (Emphasis supplied.)

The decision of the California Supreme Court is directly against the weight of legal authority. The Second, Fifth and Ninth Circuits have uniformly held that restrictions on both contributions and expenditures in a referendum are unconstitutional. *Let's Help Florida v. McCrary*, 621 F. 2d 195, 200 (5th Cir. 1980); *C & C Plywood Corporation v. Hanson*, 583 F. 2d 421, 424-25 (9th Cir. 1978); and *Schwartz v. Romnes*, 495 F. 2d 844, 852-53 (2d Cir. 1974).[6]

Contributions made to influence referenda are essential to the discussion of public issues and government policies. In the area of referenda spending this Court has not differentiated between contributions and independent expenditures. Referenda contributions and expenditures serve core First Amendment functions by providing information to voters so that they may exercise their franchise intelligently. The Berkeley Ordinance restricts the amount of contributions that an indi-

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[6] In *C & C Plywood Corporation v. Hanson*, 583 F. 2d 421 (9th Cir. 1978), the Ninth Circuit, in determining the constitutionality of a Montana statute which prohibited corporate spending concerning a referendum, said:

> Although the relevant statute in *Bellotti* forbade both contributions and expenditures by corporations, the Court did not distinguish between the two activities in deciding that the statute was unconstitutional. It did, however, draw a clear distinction between ballot issues and partisan elections. *Id.* at 424-25.

In *Let's Help Florida v. McCrary*, 621 F. 2d 195 (5th Cir. 1980), the Fifth Circuit, in determining the constitutionality of a Florida statute which restricted to $3,000 the amount of contributions by an individual to a referendum committee, said:

> The people's need to prevent large contributors from improperly influencing this representative decisionmaker is critical. In contrast, when people vote on a referendum proposal, they directly decide the pertinent political issue for themselves. Large contributions for publicity by one group or another do not influence the political decisionmakers—in this case, the voters themselves—except in a manner protected by the first amendment. *Id.* at 199-200.

vidual may make in support of or in opposition to a referenda. Thus, the Berkeley Ordinance directly violates the First Amendment right of free speech and inhibits the unfettered discussion of political issues which is the life blood of representative democracy.

II. There Is No Compelling Governmental Interest to Justify the Restriction Contained in the Berkeley Ordinance.

Governmental activity in the area of the First Amendment is subject to a standard of strict scrutiny. *NAACP v. Alabama,* 357 U.S. 449 (1958). First Amendment rights can be restricted or prohibited but only when the state demonstrates a sufficiently compelling interest in the regulation. *Bates v. Little Rock,* 361 U.S. 516 (1960). The state must employ means narrowly drawn to avoid unnecessary interference with First Amendment guarantees. *Buckley v. Valeo,* 424 U.S. 1, 25 (1976). Moreover, the burden is on the government to show the existence of such an interest. *Elrod v. Burns,* 427 U.S. 347, 362 (1976). This strict and demanding review is essential because "First Amendment freedoms need breathing space to survive. . . ." *NAACP v. Button,* 371 U.S. 415, 433 (1963).

The Berkeley Ordinance limits the amount of money a person, group or business entity may contribute to a committee or organization supporting or opposing a referendum. Contributions and expenditures are basic First Amendment activities. *Buckley v. Valeo,* 424 U.S. 1, 14 (1976). Limitations on such activities seriously threaten a fundamental purpose of the First Amendment—" 'the liberty to discuss publicly and truthfully all matters of public concern. . . .' " *First National Bank of Boston v. Bellotti,* 435 U.S. 765, 776 (1978). Every governmental interest cited by the Court below to jus-

tify the Berkeley limitation of First Amendment rights has previously been rejected by this Court, as well as by a number of Circuit Courts.[7]

The California Supreme Court asserts that limits on contributions to referenda are constitutional because unlimited contributions have the potential to corrupt the electoral process. The Court below relied on *Buckley v. Valeo*, 424 U.S. 1 (1976), for precedent that restrictions on contributions to referendum campaigns are constitutional because such contributions are a "valid means of dealing with undue influence by moneyed interests in the electoral process." *Citizens Against Rent Control v. City of Berkeley*, 27 Cal. 3d 819, 823 (1980), quoting from *Hardie v. Eu*, 18 Cal. 3d 371, 378 (1976). The Court's reliance on *Buckley* is plainly wrong and underscores its failure to observe the distinction between candidate elections and referenda. *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 787-88 (1978).

In *Buckley* this Court said that the integrity of our representative democracy is undermined to the extent that large contributions are given to secure political *quid pro quo's* from current and potential office holders. *Buckley v. Valeo*, 424 U.S. 1, 26-27 (1976). The *Buckley* Court cited the disturbing examples that surfaced after the 1972 presidential election which demonstrated that the Court's concern for the integrity of the electoral process was not illusory. *Id.* at 27. The Court also determined that the "appearance of corruption," which could be inferred from the public's awareness that elected officials and candidates receive large contributions, was a sufficiently compelling governmental reason to restrict contributions. The Court stated, "Congress could legitimately conclude that the avoidance of the appearance of improper influence 'is also critical . . . if confidence in a sys-

[7] See note 6 and *Schwartz v. Romnes*, 495 F. 2d 844 (2d Cir. 1974).

tem of representative Government is not to be eroded to a disastrous extent.' " *Id.* at 27, quoting from *CSC v. Letter Carriers,* 413 U.S. 548, 565 (1973). This concern for the integrity of the electoral process and representative government is the direct result of the effect large contributions presumably have on officeholders and candidates for public office.

The California Supreme Court's assertion that contributions to a ballot question election have the same potential for corruption of the electoral process as do contributions to candidate elections has already been disposed of by the Supreme Court. In *First National Bank of Boston v. Bellotti,* 435 U.S. 765 (1978) the Court stated:

> Referenda are held on issues, not candidates for public office. The risk of corruption perceived in cases involving candidate elections . . . simply is not present in a popular vote on a public issue. To be sure, corporate advertising may influence the outcome of the vote; this would be its purpose. But the fact that advocacy may persuade the electorate is hardly a reason to suppress it. *Id.* at 790. (Citations omitted.)

The Court in *First National Bank* did not dismiss the effect unrestricted spending has on the electoral process or on the faith the people place in that process. The Court stated that preserving the integrity of the electoral process, preventing corruption and sustaining the active responsibility of the individual citizen are governmental interests of the highest importance. *Id.* at 788-789. The Court concluded, however, that the proponents of the Massachusetts statute, there in issue, failed to demonstrate by record or legislative findings that corporate advocacy, or advocacy by wealthy and powerful organizations which spend more money than their opponents, threatened *imminently* to undermine democratic process of referenda. *Id.* at 789.

Here, the City of Berkeley presented no evidence that voter confidence was eroded by unlimited contributions in the referenda process. Such contributions create no danger of reciprocal obligations from an elected official to a major contributor. The right of the public to be informed is of paramount concern in preserving the free exchange of ideas in the electoral process. This right should not be curtailed on supposition alone.

The California Supreme Court also relied on a series of quotations from selected articles by social scientists to support its claim that unlimited contributions threaten the electoral process. This is hardly a forceful demonstration that unlimited contributions undermine the integrity of the referendum process. In fact, there is no empirical data to support the proposition that unrestricted spending, either through contributions or expenditures, undermines the confidence of the citizens in the referenda process.

Spending to influence the voters on a referendum, usually from *contributed* funds, buys the copywriting, printing, distribution and media time essential to convey information to the voters. Indeed, unlike a candidate election where a "person" is the basis of the campaign effort and that "person" can speak for himself, a referendum cannot speak on its own behalf. Money is essential to a referendum effort because "virtually every means of communicating ideas in today's mass society requires the expenditure of money." *Buckley v. Valeo,* 424 U.S. 1, 19 (1976). The ability to speak to the voters and the voters' right to hear are precisely the functions the First Amendment is designed to protect. *First National Bank of Boston v. Bellotti,* 435 U.S. 765, 776 (1978).

While scholarly research on the influence of larger contributions to referenda campaigns is inconclusive, the side which spends the most money does not always prevail. In California, from 1972 to 1976, six of the eight measures on

which advocates spent more than their opponents were defeated. In the same time period, opponents spending the most money were successful six out of eight times.[8] In sixteen ballot questions in California from 1972 to 1976, the side which spent the most money prevailed in only eight races.[9] These findings are supported by recent referenda in Massachusetts.

In 1980 the Massachusetts voters were presented with a ballot question which limited yearly property tax liability to 2½% of the assessed valuation. The ballot question, "Proposition 2½," was the subject of substantial spending by a number of interest groups. Two primary committees emerged to support the measure. One of these was almost totally financed with corporate contributions in the amount of $270,000. The other was funded by the contributions of individuals and small business in the amount of $158,000. Together the proponents of "Proposition 2½" spent $432,000. The main committee in opposition to the question raised and spent $561,000. Thus, the opponents of "Proposition 2½" outspent the proponents by a margin of almost $130,000.[10]

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[8] American Enterprise Institute, *Referendums* (Washington, D.C. 1978), pp. 104-105.

[9] *Id.*

[10] Review of documents in the Massachusetts Office of Campaign and Political Finance revealed the following:

Proponents:	
Citizens for Limited Taxation	157,908.86
Concerned Citizens for Lower Taxes	270,985.00
Citizens for 2½ Brockton	3,377.00
Total	432,270.86
Opponents:	
Vote No on Question 2	544,358.48
Metropolitan Vote No on Question 2 Committee	16,408.10
Total	560,766.58

Opponents also included a number of committees organized at the municipal level. Their spending was insignificant.

Nevertheless, "Proposition 2½" was overwhelmingly approved by the voters in the November election of 1980.[11]

Two years earlier, however, the result was different. In 1978 Massachusetts voters considered an amendment to the state constitution which proposed to establish four classes of real property for taxation purposes. This question was in response to a court ruling that required each city and town to rectify an historic imbalance between assessments of residential and business properties. The opponents spent $550,000. The proponents spent $900,000. The measure passed 1,285,865 to 649,400.[12]

These two recent examples in Massachusetts bear out the California experience from 1972-1976 that the effect of money on referenda is difficult to quantify. In fact, there are many reasons for success or defeat of a referendum. These include: how the money was spent; the creation of coalitions (including political parties and newspaper endorsements); and the nature of the issues themselves.

Despite the lack of evidence that money buys referenda elections, the California Court asserts that there is a "nexus between voter apathy and large campaign contributions." *Citizens Against Rent Control v. City of Berkeley,* 27 Cal. 3d at 828 (1980). The Court cites one, and only one, work for the proposition that voters are alienated because of large contributions. *Id.* The attitude polls used in that work concerned faith in the overall electoral system. Voters' attitudes about

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[11] According to the Massachusetts Secretary of State's Office, Election Division, the statewide vote on "Proposition 2½" in November, 1980 was:

For passage	1,503,771
Against passage	758,978

[12] S. Lydenburg, *Bankrolling Ballots* (Council on Economic Priorities 1979), p. 69.

the effect of money on referenda were not surveyed.[13] Moreover, three different polls were used. The attitudes expressed in one poll may not correlate to the attitudes expressed in the others. It is not clear if the people who felt powerless also felt that contributions should be limited or if they were less likely to vote because money was spent on referendum campaigns.

Aside from the problems with the source cited by the Court, the Court itself repudiates the theory no less than a few lines later in its opinion. Referring to another political scientist who analyzed referenda in Colorado, the California Court states:

> "This study did not find Colorado citizens apathetic, cynical, or ignorant towards the initiatives. The majority of people were interested in the issues and did have ideas on them." *Id.* at 828.[14]

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[13] Analysis of aggregate voting patterns is not an accurate method of revealing the reasons why voters make decisions. The reasons a person votes or does not vote are myriad. Numerous reasons exist for low voter turnout, not the least of which could be a reaction against referenda generally. *The Denver Post,* Editorial, Nov. 21, 1976, p. 21, cited by John Shockley in *The Initiative Process in Colorado Politics: An Assessment,* see note 14. Moreover, the decision by the voter on a referendum is "influenced by currents of conservatism and liberalism, by socioeconomic status, by age and race, by urban or rural residence, and—related to all of these—by party affiliation." American Enterprise Institute, *The Referendum Device* (Washington, D.C. 1981), p. 57.

The best method for assessing whether contributions undermine voter confidence would require sophisticated polling. Such a survey would have to focus on referenda and not simply money in politics. Such a study must involve more than one time frame and include several referenda situations. It would also have to analyze the relationships between voting habits, "powerlessness" and confidence in the referenda process. Such a study has never been done.

[14] See also, J. Shockley, *The Initiative Process in Colorado Politics: An Assessment* (Bureau of Governmental Research and Services, Boulder, Colorado 1980).

It would appear that, in regard to referenda, some voters, at least in Colorado, do not share the California Court's loss of confidence in the process.

There is no doubt that "Preserving the integrity of the electoral process, preventing corruption and 'sustain[ing] the active, alert responsibility of the individual citizen in a democracy for the wise conduct of government' are interests of the highest importance." *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 788-89 (1978), quoting *United States v. Automobile Workers*, 352 U.S. 567, 575 (1957). But, here there has been no showing that large contributions to referenda pose any threat to the confidence of the citizenry in the referendum process. The arguments of the California Supreme Court are simply not persuasive. As this Court has noted:

> ... [a] restriction so destructive of the right of public discussion, without greater or more imminent danger to the public interest than existed in this case, is incompatible with the freedoms secured by the First Amendment. *Thomas v. Collins*, 323 U.S. 516, 537 (1945).

III. The Berkeley Ordinance Is Not Closely Drawn to Avoid Unnecessary Abridgment of First Amendment Freedoms.

The Court below asserts that unlimited contributions constitute a threat to the referendum process sufficiently com-

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Mr. Shockley observes in this work that "the initiative process galvanized, motivated, and interested the voters." In a Colorado election where a great deal of money was spent, he states, "more people voted on each of the ten ballot propositions than voted in state legislative races, regents races, and judicial retention elections." Indeed, in a few instances, "more people voted on a particular initiative than voted for president of the United States." *Id.* at 2-3.

pelling to justify the City's effort to limit political speech. This purpose is contradicted, however, by section 602 which is, at once, over and underinclusive. Section 602 of the Berkeley Ordinance is simply not the least restrictive method to avoid corruption of the electoral process.

In at least one important respect section 602 of the Berkeley Ordinance is overinclusive. The section purports to restrict contributions to a limit of $250 from individuals and business entities. The California Court points out that "no restriction is placed on the right of individuals or corporate members to volunteer their *services* in a ballot measure campaign." *Citizens Against Rent Control v. City of Berkeley,* 27 Cal. 3d at 829-30 (1980). Although this appears to be even-handed, it is not. Corporations are treated differently.

Section 206 of the Ordinance defines "contributions" as including "service or labor for which a payment is made." It is impossible for a corporation or business entity to perform services or labor except by paying for them. Unlike an individual who could volunteer his labor or service, these activities would be considered "contributions" when made by a corporation and subject to the $250 limit contained in section 602. This Court has previously rejected unequal treatment of businesses and individuals under the First Amendment. *First National Bank of Boston v. Bellotti,* 435 U.S. 765, 776-77 (1978). The rejection of differences in regulating the exercise of free speech was predicated on whether the speech is the type protected by the First Amendment. This Court said that speech concerning referenda is protected by the First Amendment regardless of its source. *Id.* at 776. This unequal treatment reveals that the Ordinance is not closely drawn to avoid unnecessary abridgment of First Amendment freedoms.

A more precise governmental provision in this area, for example, would be a disclosure requirement that identifies the

source of contributions, and provides information which voters could use to judge the credibility of the messages in a referendum campaign. Ironically, the Berkeley Ordinance contains extensive disclosure requirements. § 400, *et seq.* The Ordinance also contains a requirement that the city publish twice, within seven days of an election, a list of all contributors of over fifty dollars to all candidates or committees. § 112. These reporting and publishing requirements are intended to insure that the voters are aware of who is trying to influence their decision. This Court has approved such disclosure requirements. *Buckley v. Valeo,* 424 U.S. 1, 66-67 (1976) and *United States v. Harriss,* 347 U.S. 612, 625-26 (1954).

More important, disclosure, unlike a contribution limitation, reinforces First Amendment freedoms. It avoids the "paternalism" of governmental limits of political speech. The Supreme Court has always opted for more speech rather than less speech. *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.,* 425 U.S. 748, 770 (1976) and *Linmark Associates, Inc. v. Willingboro,* 431 U.S. 85, 97 (1977).

Conclusion.

Free and uninhibited debate on public issues is essential in a democracy. The First Amendment guarantees the people the right to speak about public issues and to hear all viewpoints. The First Amendment is designed to facilitate reasoned, intelligent self-government. Nowhere is the guarantee of free speech more essential than when the voters directly determine governmental action and policy in the referenda process. Unrestricted and undiminished information is vital to the referenda process so that voters can exercise their decision-making powers intelligently. The Berkeley Or-

dinance by limiting contributions reduces the amount of information available to the people. The Berkeley Ordinance, instead of insuring voter confidence, distorts the political process, usurps the right of the electorate to make decisions for itself and makes intelligent self-government impossible.

The danger that this case presents to the right of the people to engage in direct legislative action through the referendum process requires a clear statement by this Court that the public's right to wide-open, robust debate may not be impaired.

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